

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-205960

DATE: August 13, 1982

MATTER OF: Cherokee Leathergoods, Inc.

DIGEST:

1. Where solicitation for two types of leather goods required samples to be submitted which conform to specifications listed in solicitation, agency should have rejected as nonresponsive bid on one type which was accompanied by sample that did not meet those specifications.
2. Where agency viewed bidder's reversed bid prices on two items as an "apparent clerical" error based on other bidders' pricing patterns and on prior prices for one of the items and bidder verified that error, agency properly corrected the bid.
3. Where solicitation requires submission of bid sample, that sample must be made available for public inspection at bid opening.
4. Claim for lost profits is not recoverable against Government even if protester was wrongfully denied a contract.

Cherokee Leathergoods, Inc. protests the award of a contract by the United States Secret Service for a quantity of leathergoods under invitation for bids (IFB) No. USSS 82-B-8. Cherokee contends that the contracting officer improperly refused to allow examination of the bid samples at bid opening and permitted the awardee, Hub Uniform Co., to change its bid prices after bid opening. The protester further argues that Hub's bid should have been rejected as nonresponsive. Cherokee requests that we award it

damages for the profits it lost as a result of these allegedly improper actions. We agree with Cherokee that a portion of Hub's bid was nonresponsive and should have been rejected. That part of its protest is sustained. The protester's claim for lost profits is denied.

The IFB solicited bids for leather belts and earmold cases for the uniformed division of the Secret Service. Item 1 of the IFB requested unit prices on 900 belts and Item 2 sought unit prices on the same number of earmold cases. Bidders were required to submit samples along with their bids, which, according to the IFB, would be "evaluated to determine compliance with all characteristics listed in the specifications * * *."

Three firms, including the protester, submitted the following bids; however, only Cherokee and Hub submitted the required samples of the earmold cases:

| | Item 1 | Item 2 |
|---------------------------------|-------------|--------------|
| Hub | \$ 8.50 ea. | \$ 22.15 ea. |
| Cherokee | 23.49 | 9.15 |
| American Uniform Sales, Inc. | 26.90 | 10.95 |

At bid opening, Hub's bid was the first one read by the contracting officer. Upon hearing its bid, Hub's representative stated that it had inadvertently transposed its prices on the two items. After all of the bids were opened, Cherokee's representative requested an opportunity to examine Hub's sample. The contracting officer denied the request.

Subsequent to the bid opening, and because he believed a clerical error had been made, the contracting officer asked Hub to verify its bid. After receiving Hub's verification of its intended pricing, the contracting officer corrected Hub's bid by reversing its unit prices and awarded it the contract.

Cherokee first argues that the Secret Service improperly accepted Hub's bid because the sample earmold case that Hub submitted did not meet the specifications listed in the IFB.

The Secret Service does not dispute Cherokee's contention that the sample did not conform to the specifications; it argues, however, that it never expected the samples to be in strict compliance with the specifications, but only intended to evaluate the samples "by feel." It maintains that Hub's sample was satisfactory under this method of evaluation. Since the IFB specifically provided that the samples must conform with all the IFB's specification requirements, we agree with the protester that the nonconforming sample rendered Hub's bid on the earmold cases nonresponsive.

The IFB specifications required that the earmold case should be constructed of two separate pieces of leather comprising the front and back of the case, and two other pieces of leather making up the sides. The two side pieces were to be stitched to the front and back pieces, thereby forming a pouch. Hub's sample did contain the required front and back pieces; however, it did not use the separate side pieces. In the sample, the front piece was molded in such a manner that when connected directly to the back piece it formed a pouch. This sample clearly does not comply with the IFB's specifications. (We note that Cherokee's sample would be nonresponsive for the same reason.)

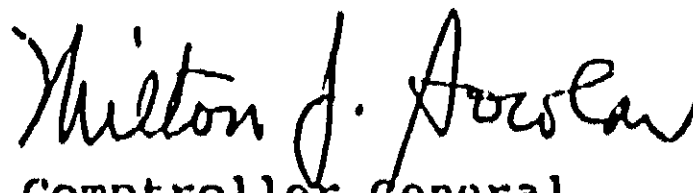
As a general rule, where a solicitation lists definitive specifications and requires that bid samples strictly comply with those specifications, a sample that does not so comply renders the bid nonresponsive. Airway Industries, Inc.; United States Luggage Corp., B-190093, August 14, 1978, 78-2 CPD 115; Casecraft, Inc., B-201065, July 20, 1981, 81-2 CPD 51. In this case, since the IFB required bid samples to comply with the listed specifications and since Hub's sample clearly did not do so, the contracting officer should have rejected Hub's bid on the earmold cases. If the agency did not consider the specification requirement that the earmold case be constructed of four pieces was necessary it should have canceled the solicitation and resolicited its needs without such a requirement. We also agree with Cherokee that the bid samples should have been made available for public inspection at the bid opening as such samples relate to the responsiveness of the bid. 38 Comp. Gen. 450 (1958). In any event, however, Cherokee was not prejudiced by the contracting officer's initial refusal to permit it to examine the sample as the

protester was later allowed access to the sample and, in fact, filed a timely protest based on its view that the sample did not meet the IFB's requirements.

Cherokee further contends that the Secret Service improperly permitted Hub to correct its bid by reversing its bid prices, thus displacing Cherokee as low bidder on Item 2. We do not agree. We think, based on a comparison with the other bidders' pricing patterns, and on prior prices bid on leather belts (which comprised Item 1), that the agency properly viewed Hub's bid as containing an "apparent clerical" error correctable under Federal Procurement Regulations § 1-2.406-2. Once Hub verified that error, the agency was permitted to correct the bid.

Cherokee alleges that as a result of the contracting officer's improper actions it has suffered damages in the amount of \$20,115.00. It contends that this amount represents the profit it would have made had it received the award. It requests that we award it damages in that amount. There is no legal basis for allowing an unsuccessful bidder to recover anticipated profits. Trans-Alaska Mechanical Contractors, B-204737, September 29, 1981, 81-2 CPD 268; Jekyll Towing and Marine Services Corporation, B-199199, December 2, 1981, 81-2 CPD 413; United Telecontrol Electronics, Inc., B-191981, February 14, 1979, 79-1 CPD 104.

We sustain the protest because Hub's sample for Item 2 was nonconforming and its bid for that item should have been rejected. Although we sustain the protest, we do not recommend any corrective action with respect to this procurement since delivery under the contract has already been completed. However, by letter of today we have informed the Secretary of the Treasury of the deficiencies we have found. The claim is denied.

for 
Comptroller General
of the United States